

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201010016**

Release Date: 3/12/2010

Index Number: 2601.00-00, 9100.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-134367-09

Date:

November 16, 2009

Legend:

Grandparent	=
Taxpayer	=
Grandchild 1	=
Grandchild 2	=
Grandchild 3	=
Trust 1	=
Trust 2	=
Trust 3	=
<u>c</u>	=
Partnership	=
Accountant	=
Accounting Firm	=
Attorney	=
Law Firm	=
Date 1	=
Date 2	=
Date 3	=
Year 1	=
Year 2	=
Year 3	=

Dear :

This letter responds to a letter from your authorized representative dated July 15, 2009, and other correspondence, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Taxpayer's GST exemption to Year 1 transfers to Trusts 1, 2, and 3.

The facts and representations submitted are summarized as follows: On Date 1, Grandparent executed and funded three substantially identical irrevocable trusts for the benefit of Grandparent's grandchildren and their issue: Trust 1 for the benefit of Grandchild 1 and her descendants; Trust 2 for the benefit of Grandchild 2 and his descendants; and Trust 3 for the benefit of Grandchild 3 and his descendants.

Grandparent died on Date 2. On Date 3, in Year 1, Taxpayer, Grandparent's child and the parent of Grandchildren 1, 2, and 3, transferred c units of Partnership to each of Trusts 1, 2, and 3. Date 3 is prior to December 31, 2000, for purposes of the automatic allocation rules under § 2632(c). In Year 2, Taxpayer engaged Accountant of Accounting Firm to prepare Taxpayer's Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report the Year 1 gifts to Trusts 1, 2, and 3 and to allocate Taxpayer's GST exemption to those gifts. Accountant reported the Year 1 gifts; however, she failed to allocate Taxpayer's GST exemption to the transfers to the trusts.

In Year 3, Taxpayer's Attorney at Law Firm reviewed Taxpayer's Year 1 Form 709 and she immediately discovered the failure to allocate Taxpayer's GST exemption to the transfers to the trusts.

Section 2601 imposes a tax on every generation-skipping transfer. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2654(b)(1) provides that for purposes of this chapter, the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts. Section 26.2654-1(a)(4) provides that with respect to a separate share treated as a separate trust under paragraph (a)(1) or (a)(2) of this section, an individual's GST exemption is allocated to the separate trust.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the

taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Thus, Taxpayer is granted an extension of time of 60 days from the date of this letter to allocate Taxpayer's available GST exemption to the Year 1 transfers to Trusts 1, 2, and 3, based on the gift tax values of those transfers on Date 3.

The allocation should be made on a supplemental Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for the year in which the transfers were made, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, we are not ruling on whether the separate shares of Trusts 1, 2, and 3 for which Taxpayer is the transferor for purposes of § 2654(b)(1) will have a zero inclusion ratio as a result of the allocation of Taxpayer's GST exemption to the Date 3 transfers to the trusts. See § 26.2654-1(a)(2) and (4).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter

cc: